

Surface Transportation Board, DOT

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the performance of his duties in the interest of such intermediaries. The practitioner's relationship and responsibility to the client should be direct.

(b) The practitioner may accept employment from any organization (such as an association, club or trade organization) authorized by law to be a party to proceedings before the Board, to render services in such proceedings in any matter in which the organization, as an entity, is interested. This employment should only include the rendering of such services to the members of the organization in respect to the individual affairs as are consistent with the free and faithful performance of his duties to the Board.

(c) Nothing in this canon shall be construed as conflicting with § 1103.20(d).

§ 1103.35 Partnership or professional corporation names and titles.

In the formation of a partnership or professional corporation among practitioners care should be taken to avoid any misleading name or representation which would create a false impression as to the position or privileges of a member not duly authorized to practice. No person should be held as a practitioner who is not duly qualified under § 1103.2 or § 1103.3 of these rules. No person who is not duly admitted to practice should be held out in a way which will give the impression that he is so admitted. No false or assumed or trade name should be used to disguise the practitioner or his partnership or professional corporation.

PART 1104—FILING WITH THE BOARD—COPIES-VERIFICATION-SERVICE-PLEADINGS, GENERALLY

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AUTHORITY: 5 U.S.C. 553 and 559; 18 U.S.C. 1621; 21 U.S.C. 862; and 49 U.S.C. 721.

SOURCE: 47 FR 49554, Nov. 1, 1982, unless otherwise noted.

§ 1104.1 Address, identification, and electronic filing option.

(a) Except as provided in § 1115.7, pleadings should be addressed to the "Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, Washington, DC 20423-0001," and should designate the docket number and title of the proceeding, if known.

(b) The address of the person filing the pleading should be included on the first page of the pleading.

(c) All envelopes in which a pleading is being submitted should be marked in the lower left hand corner with the docket number, if known, (not the full title) and the pleading type.

(d) All multi-volume pleadings must be sequentially numbered on the cover of each volume to indicate the volume number of the pleading and the total number of volumes filed (e.g., the first volume in a 4-volume set should be labeled "volume 1 of 4," the second volume "volume 2 of 4" and so forth).

(e) Persons filing pleadings and documents with the Board have the option of electronically filing (e-filing) certain types of pleadings and documents instead of filing paper copies. Details regarding the types of pleadings and documents eligible for e-filing, the procedures to be followed, and other pertinent information are available on the Board's Web site, <http://www.stb.dot.gov>. If the e-filing option is chosen (for those pleadings and documents that are appropriate for e-filing, as determined by reference to the information on the Board's Web site), then the applicable requirements will be those specified on the Web site, and any requirements of 49 CFR part 1104 that are specifically applicable to filing of paper copies will not apply to the e-filed

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pleadings and documents (these requirements include, but are not limited to, number of copies, stapling or binding specifications, submission of compact disks or floppy diskettes for documents of 20 pages or more, signature “in ink,” etc.). Persons are not required to e-file, and may continue to use the Board’s processes for filing paper copies.

[47 FR 49554, Nov. 1, 1982, as amended at 48 FR 34475, July 29, 1983; 53 FR 20854, June 7, 1988; 61 FR 52711, Oct. 8, 1996; 69 FR 18498, Apr. 8, 2004; 74 FR 52906, Oct. 15, 2009]

§ 1104.2 Document specifications.

(a) Documents, except electronic filings, filed with the Board must be on white paper not larger than 8½ by 11 inches, including any tables, charts, or other documents that may be included. Ink must be dark enough to provide substantial contrast for scanning and photographic reproduction. Text must be double-spaced (except for footnotes and long quotations, which may be single-spaced), using type not smaller than 12 point. Printing may appear only on one side of the paper for original documents, but copies of filings may be printed on both sides of the paper.

(b) In order to facilitate automated processing in document sheet feeders, original documents of more than one page may not be bound in any permanent form (no metal, plastic, or adhesive staples or binders) but must be held together with removable metal clips or similar retainers. Original documents may not include divider tabs, but copies must if workpapers or expert witness testimony are submitted. All pages of original documents, and each side of pages that are printed on both sides, must be paginated continuously, including cover letters and attachments. Where, as a result of assembly processes, such pagination is impractical, documents may be numbered within the logical sequences of volumes or sections that make up the filing and need not be renumbered to maintain a single numbering sequence throughout the entire filing.

(c) Some filings or portions of filings will not conform to the standard paper specifications set forth in paragraph (a) of this section and may not be scan-

nable. For example, electronic spreadsheets are not susceptible to scanning, but oversized documents, such as oversized maps and blueprints, may or may not be scannable. Filings that are not scannable will be referenced on-line and made available to the public at the Board’s offices. If parties file oversized paper documents, they are encouraged to file, in addition to the oversized documents, representations of them that fit on the standard paper, either through reductions in size that do not undermine legibility, or through division of the oversized whole into multiple sequential pages. The standard paper representations must be identified and placed immediately behind the oversized documents they represent.

(d) Color printing may not be used for textual submissions. Use of color in filings is limited to images such as graphs, maps and photographs. To facilitate automated processing of color pages, color pages may not be inserted among pages containing text, but may be filed only as appendices or attachments to filings. Also, the original of any filing that includes color images must bear an obvious notation, on the cover sheet, that the filing contains color.

[67 FR 5514, Feb. 6, 2002, as amended at 69 FR 18499, Apr. 8, 2004]

§ 1104.3 Copies.

(a) An executed original, plus 10 copies, of every paper pleading, document, or paper permitted or required to be filed under this subchapter, including correspondence, must be furnished for the use of the Board, unless otherwise specifically directed by another Board regulation or notice in an individual proceeding. Copies may be reproduced by any duplicating process, provided all copies are clear and legible. Appropriate notes or other indications shall be used so that matters shown in color on the original, but in black and white on the copies, will be accurately identified on all copies.

(b) Electronic submissions accompanying paper filings must be furnished as follows:

(1) Textual submissions of 20 or more pages must be accompanied by three

electronic copies submitted on compact discs or 3.5-inch IBM-compatible formatted floppy diskettes.

(2) Three sets of evidence or workpapers consisting of mathematical computations must be submitted as functioning electronic spreadsheets in Lotus 1-2-3 Release 9 or Microsoft Excel 97, or compatible versions, on compact discs or 3.5-inch IBM-compatible formatted floppy diskettes. In order to fully evaluate evidence, all spreadsheets must be fully accessible and manipulable. Electronic databases placed in evidence or offered as support for spreadsheet calculations must be compatible with the Microsoft Open Database Connectivity (ODBC) standard. ODBC is a Windows technology that allows a database software package to import data from a database created using a different software package. We currently use Microsoft Access 97 and databases submitted should be in either this format or another ODBC-compatible format. All databases must be supported with adequate documentation on data attributes, SQL queries, programmed reports, and so forth.

(3) One copy of each diskette or compact disc submitted to the Board should, if possible, be provided to any other party requesting a copy.

(4) Each diskette and compact disc must be clearly labeled with the Docket Number of the proceeding in which it is filed; the name(s) of the party(ies) on whose behalf the filing is made, and "CONFIDENTIAL" or "REDACTED" as appropriate. If more than one diskette or disc is submitted for one filing, the label of each must be sequentially numbered to indicate the diskette or disc number and the total number of diskettes or discs filed (e.g., the first disc of a 4-disc set should be labeled "Disc 1 of 4," the second disc "Disc 2 of 4," and so forth).

[67 FR 5515, Feb. 6, 2002, as amended at 69 FR 18499, Apr. 8, 2004]

§ 1104.4 Attestation and verification.

(a) *Signature of attorney or practitioner.* If a party is represented by a practitioner or an attorney, the original of each paper filed should be signed in ink by the practitioner or attorney, whose address should be stated. The

signature of a practitioner or attorney constitutes a certification that the representative:

- (1) Has read the pleading, document or paper;
- (2) Is authorized to file it;
- (3) Believes that there is good ground for the document;
- (4) Has not interposed the document for delay;

A pleading, document or paper thus signed need not be verified or accompanied by affidavit unless required elsewhere in these rules.

(b) *Signature by one not authorized to represent others before the Board.* The original of each document not signed by a practitioner or attorney must be:

- (1) Signed in ink;
- (2) Accompanied by the signer's address; and
- (3) Verified, if it contains allegations of fact, under oath by the person, in whose behalf it is filed, or by a duly authorized officer of the corporation in whose behalf it is filed. If the pleading is a complaint, at least one complainant must sign and verify the pleading.

[47 FR 49554, Nov. 1, 1982, as amended at 61 FR 52711, Oct. 8, 1996]

§ 1104.5 Affirmation or declarations under penalty of perjury in accordance with 18 U.S.C. 1621 in lieu of oath.

(a) An affirmation will be accepted in lieu of an oath.

(b) Whenever any rule of this Board requires or permits matter to be supported, evidenced, established, or proved by sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, oath of office, or an oath required to be taken before a special official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proven by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury and dated, in the following form:

I _____, declare (certify, verify, or state) under penalty of perjury ("under the laws of the United States," if executed outside of the United States) that

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the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this (specify type of document). Executed on (date).

Signature

(c) Knowing and willful misstatements or omissions of material facts constitute federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to 5 years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621 which provides for fines up to \$2,000 or imprisonment up to 5 years for each offense.

[47 FR 49554, Nov. 1, 1982, as amended at 61 FR 52711, Oct. 8, 1996]

§ 1104.6 Timely filing required.

Documents must be received for filing at the Board's offices in Washington, DC within the time limits set for filing. The date of receipt at the Board, and not the date of deposit in the mail, determines the timeliness of filing. However, if a document is mailed by United States express mail, postmarked at least one day prior to the due date, it will be accepted as timely. Other express mail, received by the private express mail carrier at least one day prior to the due date, also will be accepted as timely filed. The term express mail means that the carrier or delivery service offers next day delivery to Washington, DC. If the e-filing option is chosen (for those pleadings and documents that are appropriate for e-filing, as determined by reference to the information on the Board's Web site), then the e-filed pleading or document is timely filed if the e-filing process is completed before 5 p.m. eastern time on the due date.

[47 FR 49554, Nov. 1, 1982, as amended at 61 FR 52711, Oct. 8, 1996; 69 FR 18499, Apr. 8, 2004]

§ 1104.7 Computation and extension of time.

(a) *Computation.* In computing any period of time, the day of the act, event, or default upon which the designated period of time begins to run is not included. The last day of the period is included unless it is Saturday, Sunday, or a legal holiday in the District

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of Columbia, in which event the period runs until the end of the next day which is not a Saturday, Sunday or holiday. This rule applies to forward and backward measurement of time.

(b) *Extensions.* Any time period, except those provided by law or specified in these rules respecting informal complaints seeking damage may be extended by the Board in its discretion, upon request and for good cause. Requests for extensions must be served on all parties of record at the same time and by the same means as service is made on the Board, except if service is made on the Board in person and personal service on other parties is not feasible, service on other parties should be made by first class or express mail. A request for an extension must be filed not less than 10 days before the due date. Only the original of the request and certificate of service need be filed with the Board. If granted, the party making the request should promptly notify all parties to the proceeding of the extension and so certify to the Board, except that this notification is not required in rulemaking proceedings.

(c) *Exception to time computation rules.* See 49 CFR part 1152 for special abandonment rules.

[47 FR 49554, Nov. 1, 1982, as amended at 61 FR 52711, Oct. 8, 1996]

§ 1104.8 Objectionable matter.

The Board may order that any redundant, irrelevant, immaterial, impertinent, or scandalous matter be stricken from any document.

[47 FR 49554, Nov. 1, 1982, as amended at 61 FR 52711, Oct. 8, 1996]

§ 1104.9 [Reserved]

§ 1104.10 Rejection of a deficient document.

(a) The Board may reject a document, submitted for filing if the Board finds that the document does not comply with the rules.

(b) The Board may either return the material unfiled or tentatively accept the material for filing and advise the person tendering it of the deficiency

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and require that the deficiency be corrected.

[47 FR 49554, Nov. 1, 1982, as amended at 61 FR 52711, Oct. 8, 1996]

§ 1104.11 Amendments.

Leave to amend any document is a matter of the Board's discretion.

[47 FR 49554, Nov. 1, 1982, as amended at 61 FR 52711, Oct. 8, 1996]

§ 1104.12 Service of pleadings and papers.

(a) *Generally.* Every document filed with the Board should include a certificate showing simultaneous service upon all parties to the proceeding. Service on the parties should be by the same method and class of service used in serving the Board, with charges, if any, prepaid. One copy should be served on each party. If service is made on the Board in person, and personal service on other parties is not feasible, service should be made by first-class or express mail. If a document is filed with the Board through the e-filing process, a copy of the e-filed document should be emailed to other parties if that means of service is acceptable to those other parties, or a paper copy of the document should be personally served on the other parties, but if email is not acceptable to the receiving party and personal service is not feasible, service of a paper copy should be by first-class or express mail. When a party is represented by a practitioner or attorney, service upon the practitioner is deemed to be service upon the party.

(b) *Exceptions.* Copies of letters to the Board relating to oral argument under part 1116, and subpoenas under § 1113.2, need not be served on other parties of the proceeding. Service of comments in rulemaking proceedings is not required, unless specifically directed by the Board.

(c) *Sample Certificate of Service.*

I certify that I have this day served copies of document upon all parties of record in this proceeding, by (here state the method of making service which must be consistent with this part).

Signature

Date

(49 U.S.C. 10321, 5 U.S.C. 553)

[47 FR 49554, Nov. 1, 1982, as amended at 48 FR 44827, Sept. 30, 1983; 61 FR 52711, Oct. 8, 1996; 69 FR 18499, Apr. 8, 2004]

§ 1104.13 Replies and motions.

(a) *Time.* A party may file a reply or motion addressed to any pleading within 20 days after the pleading is filed with the Board, unless otherwise provided.

(b) *Number of copies.* The original of a reply or motion should be accompanied by the same number of copies required to be filed with the pleading to which the reply or motion is addressed.

(c) *Reply to a Reply.* A reply to a reply is not permitted.

[47 FR 49554, Nov. 1, 1982, as amended at 61 FR 52711, Oct. 8, 1996]

§ 1104.14 Protective orders to maintain confidentiality.

(a) *Segregation of confidential material.* A party submitting materials which it believes are entitled to be kept confidential and not made part of the public docket should submit these materials as a separate package, clearly marked on the outside "Confidential materials subject to a request for a protective order."

(b) *Requests for protective orders.* A request that materials submitted to the Board be kept confidential should be submitted as a separate pleading and clearly headed "Motion for protective order."

[48 FR 44827, Sept. 30, 1983, as amended at 61 FR 52711, Oct. 8, 1996]

§ 1104.15 Certification of eligibility for Federal benefits under 21 U.S.C. 862.

(a) An individual who is applying in his or her name for a certificate, license or permit to operate as a rail carrier must complete the certification set forth in paragraph (b) of this section. This certification is required if the transferee in a finance proceeding under 49 U.S.C. 11323 and 11324 is an individual. The certification also is required if an individual applies for authorization to acquire, to construct, to extend, or to operate a rail line.

(b) Certification:

I _____ (Name) _____, certify under penalty of perjury under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or State offense involving the distribution or possession of a controlled substance, or that if I have been so convicted, I am not ineligible to receive Federal Benefits, either by court order or by operation of law, pursuant to 21 U.S.C. 862.

[54 FR 48250, Nov. 22, 1989, as amended at 61 FR 52711, Oct. 8, 1996; 64 FR 53268, Oct. 1, 1999; 67 FR 5515, Feb. 6, 2002]

PART 1105—PROCEDURES FOR IMPLEMENTATION OF ENVIRONMENTAL LAWS

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1105.1 Purpose.

1105.2 Responsibility for administration of these rules.

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1105.12 Sample newspaper notices for abandonment exemption cases.

AUTHORITY: 16 U.S.C. 470f, 1456, and 1536; 42 U.S.C. 4332 and 6362(b); and 49 U.S.C. 701 note (1995) (Savings Provisions), 721(a), 10502, and 10903–10905.

SOURCE: 56 FR 36105, July 31, 1991, unless otherwise noted.

§ 1105.1 Purpose.

These rules are designed to assure adequate consideration of environmental and energy factors in the Board's decisionmaking process pursuant to the National Environmental Policy Act, 42 U.S.C. 4332; the Energy Policy and Conservation Act, 42 U.S.C. 6362(b); and related laws, including the National Historic Preservation Act, 16 U.S.C. 470f, the Coastal Zone Management Act, 16 U.S.C. 1451, and the Endangered Species Act, 16 U.S.C. 1531.

§ 1105.2 Responsibility for administration of these rules.

The Director of the Office of Economics, Environmental Analysis, and Administration shall have general respon-

sibility for the overall management and functioning of the Section of Environmental Analysis. The Director is delegated the authority to sign, on behalf of the Board, memoranda of agreement entered into pursuant to 36 CFR 800.5(e)(4) regarding historic preservation matters. The Chief of the Section of Environmental Analysis is responsible for the preparation of documents under these rules and is delegated the authority to provide interpretations of the Board's NEPA process, to render initial decisions on requests for waiver or modification of any of these rules for individual proceedings, and to recommend rejection of environmental reports not in compliance with these rules. This delegated authority shall be used only in a manner consistent with Board policy. The Director may further delegate procedural authority to the Chief of the Section of Environmental Analysis as appropriate. Appeals to the Board will be available as a matter of right.

[56 FR 36105, July 31, 1991, as amended at 64 FR 53268, Oct. 1, 1999]

§ 1105.3 Information and assistance.

Information and assistance regarding the rules and the Board's environmental and historic review process is available by writing or calling the Section of Environmental Analysis, Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423.

[64 FR 53268, Oct. 1, 1999]

§ 1105.4 Definitions.

In addition to the definitions contained in the regulations of the Council on Environmental Quality (40 CFR part 1508), the following definitions apply to these regulations:

(a) *Act* means the Interstate Commerce Act, Subtitle IV of Title 49, U.S. Code, as amended.

(b) *Applicant* means any person or entity seeking Board action, whether by application, petition, notice of exemption, or any other means that initiates a formal Board proceeding.

(c) *Board* means the Surface Transportation Board.

(d) *Environmental Assessment* or "EA" means a concise public document for which the Board is responsible that